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09/539,218	03/30/2000	Paul Beinat	PMS-258	8960
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CHADBOURNE & PARKE LLP 30 ROCKEFELLER PLAZA NEW YORK, NY 10112		EXAMINER FRENEL, VANEL		
		ART UNIT		PAPER NUMBER
		3626		

DATE MAILED: 06/06/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 09/539,218	<b>Applicant(s)</b> BEINAT ET AL.	
	<b>Examiner</b> Vanel Frenel	<b>Art Unit</b> 3626	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 13 March 2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,3-16,18-31,33-69 and 71-87 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,3-16,18-31,33-69 and 71-87 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>472006</u> . | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 2/13/06 has been entered.

### **Notice to Applicant**

2. This communication is in response to the RCE filed on 2/13/06. Claim 87 has been added. Claims 1, 3-8, 10-16, 18-31, 33-69 and 71-87 are pending.

### ***Claim Objections***

3. Claim 68 objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. Applicant's has been inadvertently submitted that claim 68 has its dependency on claim 32 which itself has already been canceled. Appropriate correction is needed in the next correspondence.

4. Applicant's argument filed on 2/13/06 regarding the rejection under 35 U.S.C 101 has been persuasive and therefore the rejection is hereby withdrawn.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1, 3-8, 10-16, 18-31, 33-76 and 87 are rejected under 35 U.S.C. 103(a) as being obvious over DeTore et al (4,975,840), Seare et al (6,223,164), Joao (6,283,761) in view of Dormond et al (4,839,822).

(A) As per claim 1, De Tore discloses a computerized method for assessing medical conditions affecting a medically impaired person (Col.3, lines 63-68 to Col.4, line 35), said method comprising the steps of:

- a) inputting into a computer a plurality of profiles relating predetermined transient medical conditions to human body parts (Col.23, lines 1-34; Col.25, lines 1-68),
- b) identifying one or more said predetermined medical conditions that affect said person (Col.5, lines 19-68; Col.26, lines 1-9);
- c) selecting a said profile corresponding to each said medical condition (Col.5, lines 40-68), relating said selected profile's time dimension to the occurrence of its said medical condition (See Seare Col.20, lines 35-67 to Col.21, line 43).

De Tore and Seare do not explicitly disclose at least one said body part from the time of injury over a specific progressive time scale into the future, due to at least one said condition, over time.

However, this feature is known in the art, as evidenced by Joao. In particular, Joao suggests at least one said body part from the time of injury over a specific progressive time scale into the future, due to at least one said condition, over time (See Joao Col.38, lines 18-51).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have included the collective features of DeTore and Seare within the system of Joao with the motivation of providing healthcare information which can be utilized to find and/or locate supplies, body organ, blood, medications, and/or any other goods, products, and/or supplies (See Joao, Col.10, lines 3-7).

De Tore, Seare and Joao do not explicitly disclose that the method for assessing medical conditions having estimating the dysfunction level or the capacity of said body parts.

However, this feature is known in the art, as evidenced by Joao. In particular, Joao suggests that the method for assessing medical conditions having estimating the dysfunction level or the capacity of said body parts (See Dormond, Figs 4-5; Col.16, lines 58-68 to Col.17, line 44).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have included the collective features of DeTore, Seare and Joao

within the system of Dormond with the motivation of providing an expert system for the specific field of orthopedic trauma (See Dormond, Col.2, lines 31-33).

(B) As per claim 3, DeTore discloses the method wherein said human body parts are classified into a multi-level hierarchy, each said body part in each level of said hierarchy below a highest level of said hierarchy being a component body part of a composite body part in a higher level in said hierarchy (Col.19, lines 18-45).

(C) As per claim 4, De Tore discloses the method including the steps for at least one said composite body part having a said selected profile, allocating said estimated capacity of said selected profile among said component body parts of said composite body part (Col.14, lines 13-39), and f) creating an inherited profile for each said component body part of said composite body part of step (e), said inherited profile describing said estimated capacity allocated to said component body part from said composite body part over time, wherein said assessment is based on any said inherited profiles at step (f)(Col. 15, lines 21-59).

(D) As per claim 5, De Tore discloses the method including the step  
g) for each said component body part having multiple said selected profiles and/or said inherited profiles, combining said multiple profiles so that each said component body part has at most one profile that describes an estimated capacity of said

component body part over time, wherein said assessment is based on any said at most one profile at step (g) (Col.15, lines 30-67).

(E) As per claim 6, De Tore discloses the method including, following step (g), the step

h) combining, up to each said composite body part, said at most one profile of each said component body part of said composite body part so that each said composite body part has at most one profile that describes an estimated capacity of said composite body part over time, wherein said assessment is based on any said at most one profile at step (h) (Col.15, lines 21-59).

(F) As per claim 7, De Tore discloses the method wherein said combining step (h) includes combining said profiles of said component body parts of at least one said composite body part based on the spatial relationship among said component body parts within the human body (Col.15, lines 42-68 to Col.16, line 64).

(G) As per claim 8, De Tore discloses the method wherein the magnitude of said estimated capacity contributed to said composite profile by a said component profile combined at step (h) is positively related to the spatial distance between said component body part and other said component body parts of said composite body part (Col.31, lines 1-8).

(H) As per claim 10, De Tore discloses the method wherein, for each said component of said composite of step (h), the magnitude of the estimated capacity contributed to said composite profile by said profile of said component body part is modified by a scaling factor that relates said component body part's contribution to the capacity of said composite body part (Col.15, lines 42-68 to Col.16, line 64).

(I) As per claim 11, De Tore discloses the method wherein said scaling factor includes a first part that relates said component body part's contribution to the capacity of a group of said components and a second part that relates said group's contribution to the capacity of said composite body part (Col.15, lines 42-68 to Col.16, line 64).

(J) As per claim 12, De Tore discloses the method including the step e) modifying at least one said selected profile based on an assessment by a medical practitioner of said medical condition to which said selected profile corresponds, wherein said assessment is based on any said profiles modified at step (e) (Col.15, lines 42-68).

(K) As per claim 13, DeTore discloses the method wherein step (e) includes comparing said assessment to said selected profile (Col.15, lines 22-68),

determining whether said assessment at step (e) agrees with said selected profile according to first predetermined criteria dependent upon said assessment (Col.15, lines 22-68),



leaving said selected profile unchanged with respect to said assessment if said assessment agrees with said selected profile according to said first predetermined criteria (Col.15, lines 22-68), and

changing said profile according to second predetermined criteria dependent upon said assessment if said assessment does not agree with said selected profile according to said first predetermined criteria (Col.15, lines 42-68).

(L) As per claim 14, De Tore discloses the method wherein said estimated capacity is described as a dysfunction level (Col.17, lines 62-68 to Col.18, line 32).

(M) As per claim 15, De Tore discloses the method wherein step (c) includes modifying said selected profiles according to predetermined rules based on one or more characteristics of said medical condition and/or said person (Col.4, lines 21-68).

(N) As per claim 16, De Tore discloses a computerized method for assessing the impact of medical conditions on a person, said method comprising the steps of:

a) providing a plurality of profiles relating predetermined medical conditions to human body parts (Col.23, lines 1-34; Col.25, lines 1-68);

b) identifying one or more said body parts that affect performance of a job by said person (Col.26, lines 1-9);

c) determining what capacity level of each said one or more body parts inhibits said person from performing said job (Col.26, lines 1-14);

d) identifying one or more said predetermined medical conditions that affect said person (Col.26, lines 1-9);

e) selecting a said profile corresponding to each said one or more medical conditions (Col.15, lines 42-68);

g) for each said selected profile applicable to a said body part determined at step (b), determining a date for said applicable selected profile upon which said estimated capacity profiled by said applicable selected profile first moves beyond said capacity level determined at step (c) for its said body part so that said medical condition to which said applicable selected profile corresponds does not inhibit said job (Col.15, lines 22-68); and

h) determining the latest said date determined at step (g) (Col.15, lines 22-41), relating each said selected profile's time dimension to the occurrence of its said medical condition, relating each said selected profile's time dimension to the occurrence of its said medical condition (See Seare Col.20, lines 35-67 to Col.21, line 43).

De Tore and Seare do not explicitly disclose at least one said body part from the time of injury over a specific progressive time scale into the future, due to at least one said condition.

However, this feature is known in the art, as evidenced by Joao. In particular, Joao suggests at least one said body part from the time of injury over a specific progressive time scale into the future, due to at least one said condition (See Joao Col.38, lines 18-51).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have included the feature the collective features of DeTore and Seare within the system of Joao with the motivation of providing healthcare information which can be utilized to find and/or locate supplies, body organ, blood, medications, and/or any other goods, products, and/or supplies (See Joao, Col.10, lines 3-7).

De Tore, Seare and Joao do not explicitly disclose that the method for assessing medical conditions having estimating the dysfunction level or the capacity of said body parts.

However, this feature is known in the art, as evidenced by Joao. In particular, Joao suggests that the method for assessing medical conditions having estimating the dysfunction level or the capacity of said body parts (See Dormond, Figs 4-5; Col.16, lines 58-68 to Col.17, line 44).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have included the collective features of DeTore, Seare and Joao within the system of Dormond with the motivation of providing an expert system for the specific field of orthopedic trauma (See Dormond, Col.2, lines 31-33).

(O) As per claim 18, De Tore discloses the method wherein said estimated capacity is related to a dysfunction level and wherein step (g) includes determining said date from said applicable selected profile upon which said dysfunction level profiled by said applicable selected profile falls below said dysfunction level determined at step (c) for its said body part (Col.19, lines 19-41).

(P) As per claim 19, De Tore discloses the method, wherein, where said estimated capacity of said applicable selected profile fails to move beyond said capacity level determined at step (c) for its said body part so that said medical condition to which said applicable selected profile corresponds does not inhibit said job, said date determined at step (g) indicates that said condition always inhibits said job (Col.19, lines 19-41).

(Q) As per claim 20, De Tore discloses the method including, following step (f) and prior to step (g), the step i) for each said body part determined at step (b) having multiple said selected profiles, combining said multiple profiles so that said body part has one profile that describes an estimated capacity of said body part over time (Col.23, lines 1-33), and wherein said combined profile from step (i) is said applicable selected profile at step (g) for said body part to which said combined profile applies (Col.23, lines 1-33).

(R) As per claim 21, De Tore discloses the method wherein said human body parts are classified into a multi-level hierarchy, each said body part in each level of said hierarchy below a highest level of said hierarchy being a component body part of a composite body part in a higher level in said hierarchy (Col.19, lines 18-45).

(S) As per claim 22, De Tore discloses the method including, following step (f) and prior to step (g), the steps

i) for at least one said composite body part having a said selected profile, allocating said estimated capacity of said selected profile among said component body parts of said composite body part (Col.14, lines 13-39), and

j) creating an inherited profile for each said component body part of said composite body part of step (i), said inherited profile describing said estimated capacity allocated to said component body part from said composite body part over time (Col.15, lines 21-59).

(T) As per claim 23, De Tore discloses the method including following step (j) and prior to step (g), the step k) for each said body part that is a said body part determined at step (b) or a lower-level component body part of a said body part determined at step (b) and that has multiple said selected profiles and/or said inherited profiles, combining said multiple profiles so that said body part has one profile that describes an estimated capacity of said body part over time (Col.15, lines 21-59) and

wherein said combined profile from step (k) is said applicable selected profile at step (g) for said body part to which said combined profile applies (Col.15, lines 21-59).

(U) As per claim 24, De Tore discloses the method including, following step (k) and prior to step (g) the step

1) combining, up to each composite body part that is a said body part determined at step (b) or a lower-level component body part of a said body part determined at step (b), said profile of each said component body part of said composite body part so that said composite body part has at most one profile that describes an estimated capacity of said composite body part over time (Col.15, lines 21-59), and

wherein said combined profile from step (1) is said applicable selected profile at step (g) for said composite body part to which said combined profile applies (Col.15, lines 21-59).

(V) As per claim 25, De Tore discloses the method including, following step (f) and prior to step (g) the step i) modifying at least one said selected profile based on an assessment by a medical practitioner of said medical condition to which said selected profile corresponds (Col.8, lines 8-68).

(W) As per claim 26, Seare discloses the method wherein step (g) includes modifying said date based on an assessment by a medical practitioner of said person's ability to perform an act used in performing said job (Col.5, lines 38-67 to Col.6, line 43).

(X) As per claim 27, Seare discloses the method wherein said modifying step of step (g) includes comparing said assessment to said date (Col.5, lines 38-67 to Col.6, line 43); determining whether said assessment agrees with said date according to first predetermined criteria dependent upon said assessment (Col.5, lines 38-67 to Col.6, line 43), leaving said date unchanged with respect to said assessment if said

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assessment agrees with said date according to said first predetermined criteria (Col.5, lines 38-67 to Col.6, line 43), and changing said date according to second predetermined criteria dependent upon said assessment if said assessment does not agree with said date according to said first predetermined criteria (Col.5, lines 38-67 to Col.6, line 54).

(Y) As per claim 28, Seare discloses the method wherein step (h) includes modifying said latest date based on an assessment by a medical practitioner of said person's ability to perform said job (Col.6, lines 9-54).

(Z) As per claim 29, Seare discloses the method wherein said modifying step of step (h) includes comparing said assessment to said latest date (Col.6, lines 9-55); determining whether said assessment agrees with said latest date according to first predetermined criteria dependent upon said assessment (Col.5, lines 38-67 to Col.6, line 55), leaving said latest date unchanged with respect to said assessment if said assessment agrees with said latest date according to said first predetermined criteria, and changing said latest date according to second predetermined criteria dependent upon said assessment if said assessment does not agree with said latest date according to said first predetermined criteria (Col.5, lines 38-67 to Col.6, line 55).

(AA) As per claim 30, Seare discloses the method wherein step (e) includes modifying said selected profiles according to predetermined rules based on one or more characteristics of said medical condition and/or said person (Col.12, lines 5-62).

(BB) As per claim 31, De Tore discloses a computerized method for assessing the impact of medical conditions on a person, said method comprising the steps of:

b) inputting into a computer, for each transient medical condition of a plurality of predetermined transient medical conditions, said medical condition on at least one said body part from the time of injury over a specific progressive time scale into the future (Col.8, lines 8-55; Col.14, lines 13-39; Col.23, lines 1-34; Col.25, lines 1-68);

c) identifying one or more said predetermined medical conditions that affect said person (Col.5, lines 19-68; Col.26, lines 1-9), combining said severity values for said transient medical conditions identified at step (c) to a combined severity value (Col.16, lines 1-67 to Col.17, line 67).

De Tore and Seare do not explicitly disclose at least one said body part from the time of injury over a specific progressive time scale into the future.

However, this feature is known in the art, as evidenced by Joao. In particular, Joao suggests at least one said body part from the time of injury over a specific progressive time scale into the future (See Joao Col.38, lines 18-51).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have included the feature the collective features of DeTore and



Seare within the system of Joao with the motivation of providing healthcare information which can be utilized to find and/or locate supplies, body organ, blood, medications, and/or any other goods, products, and/or supplies (See Joao, Col.10, lines 3-7).

De Tore, Seare and Joao do not explicitly disclose that the method for assessing medical conditions having inputting into a computer a model of the human body, said model including multi-level hierarchy body parts that, in combination with each other, form the human body, a severity value that estimating the dysfunction level;

generating and outputting on an output device an assessment an assessment of the impact of said medical conditions on said person, wherein said assessment is based on said severity value.

However, these features are known in the art, as evidenced by Joao. In particular, Joao suggests that the method for assessing medical conditions having inputting into a computer a model of the human body, said model including multi-level hierarchy body parts that, in combination with each other, form the human body See Dormond, Col.16, lines 58-68 to Col.17, line 44), a severity value that estimating the dysfunction level (See Dormond, Col.6, lines 8-55);

generating and outputting on an output device an assessment an assessment of the impact of said medical conditions on said person, wherein said assessment is based on said severity value (See Dormond, Col.6, lines 39-67).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have included the collective features of DeTore, Seare and Joao

within the system of Dormond with the motivation of providing an expert system for the specific field of orthopedic trauma (See Dormond, Col.2, lines 31-33).

(CC) As per claim 33, De Tore discloses the method wherein said severity values are non-monetary values, and wherein step (d) includes converting said combined severity value to a monetary value, and wherein said assessment is based on said monetary value (Col.8, lines 8-47).

(DD) As per claim 34, De Tore discloses the method wherein step (b) includes providing a plurality of profiles relating said predetermined medical conditions to said body parts, each said profile describing an estimated capacity of at least one said body part, due to at least one said condition, over time, wherein each said profile is assigned a said severity value (Col.8, lines 8-47).

(FF) As per claim 35, Seare discloses the method wherein step (d) includes the step

e) for each said body part having multiple said medical conditions identified at step (c), prior to combining said severity values to said combined severity value, combining said severity values corresponding to said identified medical conditions to a total severity value for said body part, and f) combining body part severity values up to said combined severity value (Col.16, lines 1-67).

(GG) As per claim 36, Seare discloses the method wherein said combining step (e) includes combining said multiple severity values based on the time at which said medical conditions to which said multiple severity values correspond occurred (Col.16, lines 1-67).

(HH) As per claim 37, De Tore discloses the method wherein said human body parts are classified into a multi-level hierarchy, each said body part in each level of said hierarchy below a highest level of said hierarchy being a component body part of a composite body part in a higher level in said hierarchy (Col.19, lines 18-45).

(II) As per claim 38, De Tore discloses the method wherein step (f) includes, for each said composite body part prior to combining up to said combined severity value, combining said severity value of each said component body part of said composite body part up to a composite body part severity value for said composite body part (Col.19, lines 18-45).

(JJ) As per claim 39, De Tore discloses the method wherein said combining step (f) includes combining said severity values of said component body parts of at least one said composite body part based on the spatial relationship among said component body parts within the human body (Col.14, lines 13-49).

(KK) As per claim 40, De Tore discloses the method wherein step (f) includes combining said severity values of said component body parts and said composite body parts up to said combined severity value so that said combined severity value corresponds to the whole human body (Col.19, lines 18-45).

(LL) As per claim 41, De Tore discloses the method wherein said severity values are non-monetary values and wherein step (d) includes converting said combined severity value to a monetary value (Col.8, lines 8-47).

(MM) As per claim 42, De Tore discloses the method wherein step (d) includes the step

e) for each said body part having multiple said medical conditions identified at step (c), prior to combining said severity values to said combined severity value, combining said severity values corresponding to said identified medical conditions to a total severity value for said body part, and

f) combining body part severity values up to said combined severity value (Col.19, lines 18-45).

(NN) As per claim 43, De Tore discloses the method wherein said combining step (e) includes combining said multiple severity values based on the time at which said medical conditions to which said multiple severity values correspond occur and on the length of said profiles corresponding to said body parts (Col.19, lines 18-45).

(OO) As per claim 44, De Tore discloses the method wherein said human body parts are classified into a multi-level hierarchy, each said body part in each level of said hierarchy below a highest level of said hierarchy being a component body part of a composite body part in a higher level in said hierarchy (Col.19, lines 18-45).

(PP) As per claim 45, De Tore discloses the method wherein step (f) includes, for each said composite body part prior to combining up to said combined severity value, combining said severity value of each said component body part of said composite body part up to a composite body part severity value for said composite body part (Col.19, lines 18-45).

(QQ) As per claim 46, De Tore discloses the method wherein said combining step (f) includes combining said severity values of said component body parts of at least one said composite body part based on the spatial relationship among said component body parts-within the human body (Col.19, lines 18-45).

(RR) As per claim 47, De Tore discloses the method including, prior to combining said severity values to said combined severity value, the step

e) modifying at least one said severity value based on an assessment by a medical practitioner of said medical condition to which said severity value corresponds (Col.21, lines 3-38).

(SS) As per claim 48, De Tore discloses the method 'including, prior to combining said severity values to said combined severity value, the steps

f) modifying at least one said selected profile based on an assessment by a medical practitioner of said medical condition to which said selected profile corresponds (Col.21, lines 3-38), and

g) for each said selected profile modified at step (f), modifying said severity value corresponding to said selected profile based on the modification to said selected profile at step (f) (Col.21, lines 3-38).

(TT) As per claim 49, De Tore discloses the method wherein, for a said medical condition corresponding to a whiplash injury, step (b) includes deriving said severity value for said injury based on treatment applied to said whiplash injury (The Examiner interprets medical records, financial statements, consumer investigative reports, motor vehicle reports , and other relevant information not available from the application data as a form of whiplash injury Col.10, lines 15-30).

(UU) As per claim 50, De Tore discloses the method wherein said deriving step includes deriving said severity value for said whiplash injury based on treatment applied to said whiplash injury and on the type of medical practitioner that provided said treatment (Col.21, lines 17-29).

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(VV) As per claim 51, De Tore discloses the method including the step) where said person has spent time in a hospital as a patient, providing a severity value that describes the impact on said person of said time, wherein said assessment is based on any said severity provided at step (e) (Col.21, lines 4, lines 21-68).

(WW) As per claim 52, De Tore discloses the method including the step

e) where said person has received convalescent care, providing a severity value that describes the impact on said person of time spent by said person under said convalescent care,

wherein said assessment is based on any said severity provided at step (e)

(Col.).

(XX) As per claim 53, De Tore discloses the method including the step

e) where said person is predicted to suffer a medical condition in the future, providing a severity value that describes the impact on said person of said medical condition,

wherein said assessment is based on any said severity provided at step (e) (Col.15, lines 42-68 to Col.16, line 19).

(YY) As per claim 54, De Tore discloses the method including scaling said severity value provided at step (e) by a factor corresponding to a predicted likelihood that said future medical condition will occur (Col.15, lines 42-68).

(ZZ) As per claim 55, De Tore discloses the method wherein, for a said medical condition corresponding to a post traumatic stress disorder, step (b) includes deriving said severity value for said medical condition based on treatment applied to said post traumatic stress disorder (Col.21, lines 1-16).

(AAA) As per claim 56, De Tore discloses the method wherein said deriving step includes deriving said severity value for said post traumatic stress disorder based on treatment applied to said post traumatic stress disorder and on the type of medical practitioner that provided said treatment (Col.21, lines 1-42).

(BBB) As per claim 57, De Tore discloses the method including the step e) where said person has suffered a loss of ability to enjoy life, providing at least one severity value that describes the impact on said person of said loss of ability to enjoy life, wherein said assessment is based on any said severity provided at step (e) (Col.21, lines 1-42).

(CCC) As per claim 58, De Tore discloses the method wherein step (e) includes providing a said at least one severity value that describes the impact on said person of temporary loss of ability to enjoy life (Col.21, lines 1-16).



(DDD) As per claim 59, De Tore discloses the method wherein step (e) includes providing a said at least one severity value that describes the impact on said person of permanent loss of ability to enjoy life (Col.21, lines 1-16).

(EEE) As per claim 60, De Tore discloses the method including the step e) where said person has suffered a permanent dysfunction, providing a severity value that describes the impact on said person of said permanent dysfunction, and wherein said assessment is based on any said severity provided at step (e) (Col.19, lines 18-35).

(FFF) As per claim 61, De Tore discloses the method including the steps

e) where said person has spent time in a hospital as a patient, providing a severity value that

describes the impact on said person of said time (Col.27, lines 3-10),

f) where said person has received convalescent care, providing a severity value that describes the impact on said person of time spent by said person under convalescent care (Col.27, lines 3-10),

g) where said person is predicted to suffer a medical condition in the future, providing a severity value that describes the impact on said person of said medical condition (Col.27, lines 3-19),

h) where said person has suffered post traumatic stress syndrome, providing a severity value that describes the impact on said person of said post traumatic stress syndrome (Col.21, lines 1-16),

- i) where said person has suffered a temporary loss of ability to enjoy life, providing at least one severity value that describes the impact on said person of said loss (Col.27, lines 3-19),
- j) where said person has suffered a permanent loss of ability to enjoy life, providing at least one severity value that describes the impact on said person of said loss (Col.27, lines 3-19), and
- k) where said person has suffered a permanent dysfunction, providing a severity value that describes the impact on said person of said permanent dysfunction, wherein said assessment is based on any said severities provided at steps (e)-(k) (Col.23, lines 29-37).

(GGG) As per claim 62, Seare discloses the method including the step 1) combining any said severity values provided at steps (e) - (k) with said combined severity value, wherein said assessment is based on a combined severity value from step (1) (Col.16, lines 1-67 to Col.17, line 67).

(JJJ) As per claim 63, De Tore discloses the method wherein said severity values are non-monetary values, wherein step (1) includes converting any said severity values provided at steps (e) - (k) and said combined severity value to a monetary value, and wherein said assessment is based on said monetary value (Col.8, lines 8-47).

(KKK) As per claim 64, De Tore discloses the method wherein step (1) includes expressing said monetary value as a range of expected monetary values (Col.13, lines 2-35).

(LLL) As per claim 65, De Tore discloses the method wherein step (1) includes the steps m) combining any said severity values provided at steps (e) - (i) with said combined severity value, n) combining any said severity values provided at steps (j) and (k) with each other, o) converting said severity value as combined at step (m) to a first monetary value, p) converting said severity value as combined at step (n) to a second monetary value, and q) combining said first and second monetary values (Col.17, lines 5-68 to Col.18, line 63).

(MMM) As per claim 66, De Tore discloses the method wherein step (q) includes expressing said combined first and second monetary values as a range of expected monetary values (Col.17, lines 40-68 to Col.18, line 68).

(NNN) As per claim 67, De Tore discloses the method including the step e) where said person has lost, and/or will lose in the future, wages due to said medical conditions identified at step (c), assessing a monetary amount for said lost wages (Col.18, lines 33-68).

(OOO) As per claim 68, De Tore discloses the method including the step due to said medical conditions identified at step (c), assessing a monetary amount for said lost wages (Col.18, lines 38-68).

(PPP) Claim 69 differs from claims 1, 16 and 31 by reciting providing a model of the human body, said model including body parts that, in combination with each other, form the human body, wherein said human body parts are classified into a multi-level hierarchy, each said body part in each level of said hierarchy below a highest level of said hierarchy being a component body part of a composite body part in a higher level in said hierarchy.

As per this limitation, it is noted that De Tore discloses a method for assessing the impact of medical conditions on a person, said method comprising the steps of :

- b) providing, for each transient medical condition of a plurality of predetermined transient medical conditions, a severity value that estimates the dysfunction level produced by said transient medical condition on at least one said body part (Col.19, lines 29-45 to Col.21, line 17; Col.23, lines 1-34; Col.25, lines 1-68);
- c) identifying one or more said predetermined medical conditions that affect said person (Col.; Col.5, lines 19-68; Col.26, lines 1-9);
- d) for each said body part having multiple said medical conditions identified at step (c) (Col.23, lines 1-37),
- f) where said person has spent time in a hospital as a patient, providing a severity value (Col.21, lines 3-21);

- g) where said person has received convalescent care, providing a severity value that describes the impact on said person of time spent by said person under convalescent care (Col.27, lines 1-9);
- h) where said person is predicted to suffer a medical condition in the future, providing a severity value that describes the impact on said person of said medical condition (Col.19, lines 18-26);
- i) where said person has suffered post traumatic stress syndrome, providing a severity value that describes the impact on said person of said post traumatic stress syndrome (Col.19, lines 18-26);
- j) where said person has suffered a temporary loss of ability to enjoy life, providing at least one severity value that describes the impact on said person of said loss (Col.27, lines 3-19);
- k) where said person has suffered a permanent loss of ability to enjoy life, providing at least one severity value that describes the impact on said person of said loss (Col.27, lines 3-19); and
- l) where said person has suffered a permanent dysfunction, providing a severity value that describes the impact on said person of said permanent dysfunction (Col.23, lines 29-37), combining said severity values corresponding to said identified medical conditions to a total severity value for said body part based on the time at which said medical conditions to which said severity values correspond occurred (See Seare, Col.24, lines 60-67 to Col.25, line 60); the impact on said person from the time of injury over a specific progressive time scale into the future (See Joao Col.38, lines 18-51) and

Dormond discloses e) for each said composite body part up to a composite body part corresponding to the human body as a whole, combining said severity value of each said component body part of said composite body part up to a composite body part severity value for said composite body part based on the spatial relationship among said component body parts within the human body (See Dormond, Fig.15; Col.6, lines 32-68).

Thus, it is readily apparent that these prior art systems utilize a model of the human body, said model including body parts that, in combination with each other, form the human body, wherein said human body parts are classified into a multi-level hierarchy, each said body part in each level of said hierarchy below a highest level of said hierarchy being a component body part of a composite body part in a higher level in said hierarchy to perform their specified function.

The remainder of claim 69 is rejected for the same reason given above for claims 1, 16, and 31, and incorporated herein.

(QQQ) As per claim 70, Seare discloses the method including displaying an assessment of the impact of said medical conditions on said person, wherein said assessment is based on said whole body severity value determined at step (e) and on any said severity values provided at steps (f) - (1) (Col.16, lines 1-67 to Col.17, line 67).

(RRR) As per claim 71, De Tore discloses the method wherein said severity values are non-monetary values, including the step m) converting said whole body severity of step (e) and any said severities provided at steps (f) - (1) to a monetary value, and wherein said assessment is based on said monetary value (Col.8, lines 8-47).

(SSS) As per claim 72, De Tore discloses the method wherein step (m) includes the steps

n) combining any said severity values provided at steps (f) - (j) with said whole body severity value of step (e) (Col.8, lines 8-47),

o) combining any said severity values provided at steps (k) and (1) with each other (Col.8, lines 8-47),

p) converting said severity value as combined at step (n) to a first monetary value (Col.17, lines 40-68 to Col.18, line 60),

q) converting said severity value as combined at step (m) to a second monetary value (Col.17, lines 40-68 to Col.18, line 60), and

r) combining said first and second monetary values (Col.17, lines 40-68 to Col.18, line 60).

(TTT) As per claim 73, De Tore discloses the method wherein step (r) includes expressing said combined first and second monetary values as a range of expected monetary values (Col.18, lines 33-68).

(UUU) As per claim 74, De Tore discloses the method including the step m) where said person has lost, and/or will lose in the future, wages due to said medical conditions identified at step (c), assessing a monetary amount for said lost wages (Col.18, lines 33-68).

(VVV) As per claim 75, De Tore discloses the method including the step m) where said person is predicted to lose wages due to said medical conditions identified at step (c), assessing a monetary amount for said lost wages, and wherein said assessment is based on any said monetary amount provided at step (m) (Col.17, lines 40-68 to Col.18, line 60).

(www) As per claim 76, De Tore discloses the method wherein, for a said medical condition corresponding to a whiplash injury, step (b) includes deriving said severity value for said injury based on treatment applied to said whiplash injury (The Examiner interprets medical records, financial statements, consumer investigative reports, motor vehicle reports, and other relevant information not available from the application data as a form of whiplash injury Col.10, lines 15-30).

(XXX) As per claim 87, DeTore discloses a method for assessing insurance compensation stemming from medical conditions affecting a medically impaired person, said method comprising:



a) connecting to one or more databases (See DeTore, Col.4, lines 9-35)

comprising:

b) receiving information indicating one or more patient transient medical conditions affecting the medically impaired person (See DeTore, Col.3, lines 63-68 to Col.4, line 35);

g) generating and outputting an insurance compensation value based on the results of steps (e) and /or (f) (See DeTore, Col.4, lines 9-35);

i) identifying the one or more body parts associated with the medical condition profile (See Seare, Col.20, lines 35-67 to Col.21, line 43);

ii) a plurality of medical condition profiles each medical condition profile associating a transient medical condition, one or more body parts affected by the transient medical condition and one or more temporally variable dysfunction values indicating the relative affect of the transient medical condition on each of the one or more body parts over a range of times (See Joao Col.38, lines 18-51).

DeTore, Seare, Joao do not explicitly disclose that the method having i) a multiple-level hierarchical model of the human body, including a plurality of body parts that make up the human body, wherein each body part is associated as a component of one or more other body parts and wherein each body part has associated component functionality values that indicate the body part's importance to each of the one or more other body parts of which the body part is a component; and

c) searching the one or more databases to identify medical condition profiles that associate transient medical conditions matching each of the one or more patient transient medical conditions received in step (b);

d) for each medical condition profile identified in step ©

ii) identifying the temporally variable dysfunction value associated with each of the one or more body parts associated with the medical condition profile; and

iii) using the model of (a, I) identify any body parts for which the one or more body parts of identified in (d, I) are a component;

e) generating a first capacity level for each of the one or more body parts of identified in (d, I) based on the associated temporally variable dysfunction value identified in (d, ii);

f) generating a second capacity level for any of the body parts identified in (d, iii) based on the capacity levels generated in (e) and the associated component functionality values.

However, these features are known in the art, as evidenced by Dormond. In particular, Dormond suggests that the method having i) a multiple-level hierarchical model of the human body, including a plurality of body parts that make up the human body, wherein each body part is associated as a component of one or more other body parts and wherein each body part has associated component functionality values that indicate the body part's importance to each of the one or more other body parts of which the body part is a component (See Dormond, Col.16, lines 58-68 to Col.17, line 44); and

c) searching the one or more databases to identify medical condition profiles that associate transient medical conditions matching each of the one or more patient transient medical conditions received in step (b) (See Dormond, Col.14, lines 30-68);

d) for each medical condition profile identified in step ©

ii) identifying the temporally variable dysfunction value associated with each of the one or more body parts associated with the medical condition profile (See Dormond, Col.16, lines 58-68 to Col.17, line 44); and

iii) using the model of (a, I) identify any body parts for which the one or more body parts of identified in (d, I) are a component (See Dormond, Fig.7; Col.16, lines 58-68);

e) generating a first capacity level for each of the one or more body parts of identified in (d, I) based on the associated temporally variable dysfunction value identified in (d, ii) (See Dormond, Fig.7; Col.16, lines 58-68 to Col.17, line 44);

f) generating a second capacity level for any of the body parts identified in (d, iii) based on the capacity levels generated in (e) and the associated component functionality values (See Dormond, Fig.7; Col.16, lines 58-68 to Col.17, line 44).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have included the collective features of DeTore, Seare and Joao within the system of Dormond with the motivation of providing an expert system for the specific field of orthopedic trauma (See Dormond, Col.2, lines 31-33).

7. Claims 77-86 are rejected under 35 U.S.C. 103(a) as being unpatentable over De Tore et al (4,975,840), Seare et al (6,223,164), Joao and Dormond et al (4,839,822) as applied to claims 1-76 above, and further in view of Hammond et al (5,613,072).

(A) As per claim 77, De Tore discloses a method for modeling medical conditions and impairments affecting a person (Col.23, lines 1-34),

i) providing a plurality of profiles relating predetermined transient medical conditions to human body parts, each said profile estimating the dysfunction level or the capacity (See De Tore, Col.23, lines 1-34; Col.23, lines 1-34; Col.25, lines 1-68) of at least one said body part from the time of injury over a specific progressive time scale into the future, due to at least one said condition (See Joao, Col.38, lines 18-51);

ii) identifying one or more said predetermined medical conditions that affect said person (Col.5, lines 19-68; Col.26, lines 1-9);

iii) selecting a said profile corresponding to each said medical condition (Col.5, lines 40-68), and

iv) relating said selected profile's time dimension to the occurrence of its said medical condition (See Seare Col.20, lines 35-67);

i) providing a model of the human body, said model including body parts that, in combination with each other, form the human body (See Dormond, Col.16, lines 58-68 to Col.17, line 44);

ii) providing, for each transient medical condition of a plurality of predetermined medical conditions, a severity value that estimates the dysfunction level produced by said transient medical condition on at least one said body part (Col.23, lines 1-37),

- iii) identifying one or more said predetermined medical conditions that affect said person (Col.5, lines 19-68; Col.26, lines 1-9), and
- iv) combining said severity values for said medical conditions identified at step (b,iii) to a combined severity value (See Seare Col.20, lines 35-67); and
- c) displaying an assessment of the impact of said medical condition identified at steps (a,ii) or (b,iii) on said person, wherein said assessment is based on said profiles related to said medical conditions at step (d) or on said combined severity value at step (b,iv), respectively (Col.14, lines 13-39).

The combination of De Tore, Seare, Joao and Dormond do not collectively disclose said method comprising the steps of: a) where said person is subject to a workers' compensation system and where said person is subject to a common law compensation system.

However, these features are known in the art, as evidenced by Hammond. In particular, Hammond suggests a workers' compensation system (Col.1, lines 10-12) and where said person is subject to a common law compensation system (Col.1, lines 16-64).

It would have been obvious to one of ordinary skill in the art at the time of the invention to have included the features of Hammond within the collective teachings of De Tore, Seare, Joao and Dormond with the motivation of providing a standardized method for determining loss reserves which would allow both insurers and employers to budget and forecast more accurately and thus to reduce losses and improve the overall financial solvency of the insurance carrier (See Hammond Col.2, lines 9-14).

(B) As per claim 78, De Tore discloses a method for assessing the impact of medical conditions on a person (Col.3, lines 63-68 to Col.4, line 35), said method comprising the steps of: i) providing a plurality of profiles relating predetermined transient medical conditions to human body parts, each said profile estimating the dysfunction level or the capacity (See De Tore Col.23, lines 1-34; Col.23, lines 1-34; Col.25, lines 1-68); of at least one said body part from the time of injury over a specific progressive time scale into the future, due to at least one said condition (See Joao, Col.38, lines 18-51);

(ii) identifying one or more said body parts that affect performance of a job by said person (Col.5, lines 19-68; Col.26, lines 1-9);

iii) determining what capacity level of each said one or more body parts inhibits said person from performing said job (Col.17, lines 62-68 to Col.18, lines 32),

iv) identifying one or more said predetermined medical conditions that affect said person (Col.5, lines 19-68 ; Col.26, lines 1-9),

v) selecting a said profile corresponding to each said one or more medical conditions (Col.5, lines 40-68),

vi) relating each said selected profile's time dimension to the occurrence of its said medical condition,

vii) for each said selected profile applicable to a said body part determined at step (a,ii), determining a date for said applicable selected profile upon which said estimated capacity profiled by said applicable selected profile first moves beyond said capacity level determined at step (a,iii) for its said body part so that said medical condition to

which said applicable selected profile corresponds does not inhibit said job (Col.15, lines 21-59), and

viii) determining the latest said date determined at step (a,vii) (Col.17, lines 62-68 to Col.18, line 6);

i) providing a model of the human body, said model including body parts that, in combination with each other, form the human body, wherein said human body parts are classified into a multi-level hierarchy, each said body part in each level of said hierarchy below a highest level of said hierarchy being a component body part of a composite body part in a higher level in said hierarchy (See Dormond, Col.16, lines 58-68 to Col.17, line 44);

ii) providing, for each transient medical condition of a plurality of predetermined transient medical conditions, a severity value that estimates the dysfunction level produced by said transient medical condition on at least one said body part (See Dormond, Col.16, lines 58-68 to Col.17, line 44);

iii) identifying one or more said predetermined medical conditions that affect said person (Col.5, lines 19-68; Col.26, lines 1-9),

iv) for each said body part having multiple said medical conditions identified at step (b,iii), combining said severity values corresponding to said identified medical conditions to a total severity value for said body part based on the time at which said medical conditions to which said severity values correspond occurred (Col.19, lines 29-45),

v) for each said composite body part up to a composite body part corresponding to the human body as a whole, combining said severity value of each said component

body part of said composite body part up to a composite body part severity value for said composite body part based on the spatial relationship among said component body parts within the human body (Col.19, lines 29-45),

vi) where said person has spent time in a hospital as a patient, providing a severity value that describes the impact on said person of said time (Col.21, lines 11-41),

vii) where said person has received convalescent care, providing a severity value that describes the impact on said person of time spent by said person under convalescent care (Col.27, lines 1-9),

viii) where said person is predicted to suffer a medical condition in the future, providing a severity value that describes the impact on said person of said medical condition (Col.21, lines 3-16),

ix) where said person has suffered post traumatic stress syndrome, providing a severity value that describes the impact on said person of said post traumatic stress syndrome (Col.19, lines 18-45),

x) where said person has suffered a temporary loss of ability to enjoy life, providing at least one severity value that describes the impact on said person of said loss (Col.21, lines 29-45),

xi) where said person has suffered a permanent loss of ability to enjoy life, providing at least one severity value that describes the impact on said person of said loss (Col.23, lines 1-37), and

xii) where said person has suffered a permanent dysfunction, providing a severity value that describes the impact on said person of said permanent dysfunction (Col.23, lines 1-



37); and c) displaying an assessment of the impact of said medical conditions identified at steps (a,ii) or

(b,iii) on said person, wherein said assessment is based on said latest date at step (a,viii) or on said whole body severity at step (b,v) and any said severities provided at steps (b,vi)-(b,xii), respectively (Col.14, lines 13-49).

The combination of De Tore, Seare, Joao and Dormond do not collectively disclose said method comprising the steps of: a) where said person is subject to a workers' compensation system and where said person is subject to a common law compensation system.

However, these features are known in the art, as evidenced by Hammond. In particular, Hammond suggests a workers' compensation system (Col.1, lines 10-12) and where said person is subject to a common law compensation system (Col.1, lines 16-64).

It would have been obvious to one of ordinary skill in the art at the time of the invention to have included the features of Hammond within the collective teachings of De Tore, Seare, Joao and Dormond with the motivation of providing a standardized method for determining loss reserves which would allow both insurers and employers to budget and forecast more accurately and thus to reduce losses and improve the overall financial solvency of the insurance carrier (See Hammond Col.2, lines 9-14).

(C) As per claim 79, De Tore discloses the method wherein said severity values are non-monetary values, and including the step b,xiii) converting said whole body severity

of step (b,v) and any said severities provided at steps (b,vi) (b,xii) to a monetary value, and wherein said assessment is based on said monetary value (Col.17, lines 17, lines 5-68 to Col.8, line 60).

(D) As per claim 80, De Tore discloses the method wherein said estimated capacity is described as a dysfunction level and wherein step (a,vii) includes determining said date from said applicable selected profile upon which said dysfunction level profiled by said applicable selected profile falls below said dysfunction level determined at step (a,iii) for its said body part (Col.23, lines 1-32).

(E) As per claim 81, De Tore discloses the method wherein, where said estimated capacity of said applicable selected profile fails to move beyond said capacity level determined at step (a,iii) for its said body part so that said medical condition to which said applicable selected profile corresponds does not inhibit said job, said date determined at step (a,vii) indicates that said condition always inhibits said job (Col.23, lines 1-32)..

(F) As per claim 82, De Tore discloses the method including, following step (a,vi) and prior to step (a,vii), the step (a,ix) for each said body part determined at step (a,ii) having multiple said selected profiles, combining said multiple profiles so that said body part has one profile that describes an estimated capacity of said body part over time, and wherein said combined profile from step (a,ix) is said applicable selected profile at

step (a,vii) for said body part to which said combined profile applies (Col.21, lines 3-21).

(G) As per claim 83, De Tore discloses the method wherein said human body parts are classified into a multi-level hierarchy, each said body part in each level of said hierarchy below a highest level of said hierarchy being a component body part of a composite body part in a higher level in said hierarchy (Col.19, lines 18-45).

(H) As per claim 84, De Tore discloses the method including, following step (a,vi) and prior to step (a,vii), the steps a,ix) for at least one said composite body part having a said selected profile, allocating said estimated capacity of said selected profile among said component body parts of said composite body part, and a,x) creating an inherited profile for each said component body part of said composite body part of step (a,ix), said inherited profile describing said estimated capacity allocated to said component body part from said composite body part over time (Col.19, lines 18-45).

(I) As per claim 85, De Tore discloses the method including, following step (a,x) and prior to step (a,vii), the step a,xi) for each said body part that is a said body part determined at step (a,ii) or a lower-level component body part of a said body part determined at step (a,ii) and that has multiple said selected profiles and/or said inherited profiles, combining said multiple profiles so that said body part has one profile that describes an estimated capacity of said body part over time,

and wherein said combined profile from step (a, xi) is said applicable selected profile at step (a,vii) for said body part to which said combined profile applies (Col.19, lines 18-45).

(J) As per claim 86, De Tore discloses the method including, following step (a,xi) and prior to step (a,vii) the step a,xii) combining, up to each composite body part that is a said body part determined at step (a,ii) or a lower-level component body part of a said body part determined at step (a,ii), said profile of each said component body part of said composite body part so that said composite body part has at most one profile that describes an estimated capacity of said composite body part over time (Col.19, lines 18-45), and wherein said combined profile from step (a,xii) is said applicable selected profile at step (a,vii) for said composite body part to which said combined profile applies (Col.19, lines 18-45).

#### ***Allowable Subject Matter***

8. Claim 9 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

#### **Response to Arguments**

9. Applicant's arguments filed 2/13/06 with respect to claims 1, 3-16, 18-31, 33-69 and 71-87 have been fully considered but they are not persuasive. Applicant's

arguments will be addressed hereinbelow in the order in which they appear in the response filed 2/13/06.

(A) At pages 32-36 of the 2/13/06 response, Applicant argues that the newly added features in the 2/13/06 amendment are not taught or suggested by the applied references.

In response, all of the limitations which Applicant disputes as missing in the applied references, including the features newly added in the 2/13/06 amendment, have been fully addressed by the Examiner as either being fully disclosed or obvious in view of the collective teachings of DeTore, Seare, Joao, Hammond and Dormond, based on the logic and sound scientific reasoning of one ordinarily skilled in the art at the time of the invention, as detailed in the remarks and explanations given in the preceding sections of the present Office Action and in the prior Office Action, and incorporated herein. One cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

In addition, the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981).

### ***Conclusion***

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The cited but not applied art teaches anatomically correct prosthesis and method and apparatus for manufacturing prosthesis (6,126,690).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Vanel Frenel whose telephone number is 571-272-6769. The examiner can normally be reached on 6:30am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph Thomas can be reached on 571-272-6776. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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V.F

V.F

May 27, 2006

  
JOSEPH THOMAS  
SUPERVISORY PATENT EXAMINER